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Date of Decision: 18th September 1995

SPECIAL CIVIL APPLICATION NO. 2746 OF 1984

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not?
No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri A.S. Vakil, Advocate, for Shri S.B. Vakil, Advocate, for the Petitioners

Shri Y.M. Thakkar, Asst. Govt. Pleader, for Respondent No.1

Shri Prashant G. Desai, Advocate, for Shri G.N. Desai, Advocate, for Respondent No. 2

CORAM: A.N. DIVECHA, J.
(Date: 18th September 1995)

ORAL JUDGMENT

The prohibitory order passed by and on behalf of the State of Gujarat (Respondent No.1 herein) on 23rd November 1983 under sec. 34 of the Urban Land (Ceiling and Regulation) Act,

1976 ('the Act' for brief) as also the show-cause notice issued on 21st December 1983 thereunder for revising the order passed by the Competent Authority at Ahmedabad on 28th June 1982 as finalised by his order of 20th October 1982 are under challenge in this petition under Art. 226 of the Constitution of India. By the order of 23rd November 1983, the petitioners were directed to maintain status-quo with respect to the lands in question in their possession on the date of the order.

2. It is not necessary to set out in detail the facts giving rise to this petition. It might be sufficient to say that the petitioners filed their separate declarations in the prescribed forms under sec. 6(1) of the Act with respect to their holdings within the urban agglomeration of Ahmedabad. Since the subject-matters of all the forms were common, they were processed together. So far as the form filed by Malhar Housing Corporation was concerned, the Competent Authority found its holding not to be beyond the ceiling limit. The necessary order was passed by him on 28th June 1982. Its copy is at Annexure C to this petition. So far as the petitioners are concerned, the Competent Authority came to the conclusion that petitioner No.2 herein was holding excess land beyond the ceiling limit by 1430 sq.meters. Its copy is at Annexure D to this petition. It appears that both these orders came to the notice of the concerned officer of the State Government. He found them to be not according to law. Their suo motu revision was therefore contemplated. With a view to preserving status-quo with respect to the subject-matters of the aforesaid orders, an order was issued on 23rd November 1983 in purported exercise of power under sec. 34 of the Act directing the parties to maintain status-quo with respect to the lands in question. Its copy is at Annexure B to this petition. Thereafter one show-cause notice was issued on 21st December 1983 under sec. 34 of the Act calling upon the petitioners to show cause why the orders at Annexures C and D to this petition should not be revised. A copy of the aforesaid show-cause notice is at Annexure A to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as also the validity of the show-cause notice at Annexure A to this petition.

3. So far as the prohibitory order at Annexure B to this petition is concerned, it has preceded the show-cause notice. The Division Bench of this court in its ruling in the case of Vasantlal Chhotalal Khandwala v. The State of Gujarat and Others reported in AIR 1994 Gujarat 26 has held that the prohibitory order under sec. 34 of the Act cannot precede any show-cause notice issued thereunder. In that view of the matter, the prohibitory order at Annexure B to this petition

cannot be sustained in law. It has to be quashed and set aside.

4. So far as the challenge to the show-cause notice at Annexure A to this petition is concerned, this court usually does not entertain any challenge at that stage. This petition qua the show-cause notice at Annexure A to this petition can be said to be premature as no final decision is taken. The petitioners should reply to the show-cause notice at Annexure A to this petition to enable the concerned officer to take his appropriate decision in the matter. It would be open to the petitioners to take up all the contentions which are taken up in this petition.

5. In the result, this petition is partly accepted. The order passed by and on behalf of the State Government on 23rd November 1983 at Annexure B to this petition is quashed and set aside. So far as the show-cause notice issued on 21st December 1983 at Annexure A to this petition is concerned, the petitioners shall file their reply thereto and take up all possible contentions and the State Government will consider the case on its own merits. Since the matter is very old, the State Government may decide the case as expeditiously as possible. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.